

Letter of Findings Number: 05-0499
Sales and Use Tax
For the Tax Period 2002

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ISSUE

I. Sales and Use Tax -Imposition of Use Tax

Authority: IC § 6-8.1-5-1(b), IC § 6-2.5-2-1(a), IC § 6-2.5-3-2(a), [IC 6-2.5-3-4\(a\)\(1\)](#), IC § 6-2.5-5-2(a), [45 IAC 2.2-4-21\(b\)](#), [45 IAC 2.2-5-6\(e\)\(2\)](#).

The taxpayer protests the imposition of use tax.

II. Tax Administration-Imposition of Negligence Penalty

Authority: IC § 6-8.1-10-2.1, [45 IAC 15-11-2\(b\)](#), [45 IAC 15-11-2\(c\)](#).

STATEMENT OF FACTS

The taxpayer operates a farm. In 2002, the taxpayer purchased parts to build a grain bin. The taxpayer contracted with an electrician to do the electrical work, and with a contractor to lay the cement foundation. The Indiana Department of Revenue hereinafter referred to as the "department," assessed use tax on all the costs associated with the grain bin. The taxpayer protested this assessment. A hearing was held and this Letter of Findings results.

I. Sales and Use Tax -Imposition of Use Tax

DISCUSSION

Notices of proposed assessments are prima facie evidence that the department's claim for unpaid taxes is valid. IC § 6-8.1-5-1(b). The taxpayer has the burden of proving that the department incorrectly imposed the assessment. *Id.*

Indiana imposes a sales tax on retail transactions made in Indiana. IC § 6-2.5-2-1(a). Indiana imposes a complementary excise tax, the use tax, "on the storage, use or consumption of tangible personal property in Indiana." IC § 6-2.5-3-2(a). Property is exempt from the use tax if sales tax was paid at the time of the retail transaction. IC § 6-2.5-3-4(a)(1). Except for specifically defined instances, there is no sales or use tax imposed on the provision of a service.

In the case of a contractor who bills by lump sum contract for services performed on real estate owned by another, the contractor is responsible for paying the sales tax on materials at the time of purchase. [45 IAC 2.2-4-21\(b\)](#). The contractor who installed the cement foundation and the electrician both billed the taxpayer for their services on a lump sum basis. Therefore, they were responsible for the payment of sales tax on the materials they used in providing the services to the taxpayer. Both contractors also submitted documentation indicating that they paid sales tax on their purchases of supplies. The taxpayer does not owe any additional use tax on the payments to the contractor or the electrician.

Indiana provides farmers with an exemption from the sales and use tax at IC § 6-2.5-5-2(a) as follows:

Transactions involving agricultural machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for his direct use in the direct production, extraction, harvesting, or processing of agricultural commodities.

The department explains its position on this exemption as it relates to the purchase of tangible personal property that is incorporated into real estate at [45 IAC 2.2-5-6\(e\)\(2\)](#) as follows:

Machinery, tools, and equipment which become incorporated into real property are taxable except such machinery, tools, and equipment that are directly used in the production process: i.e., they have a direct effect upon the agricultural commodities being produced, harvested, extracted, or processed.

The taxpayer conceded that the parts were incorporated into the building surrounding the grain drying machinery of the grain bin were properly subject to the use tax. The taxpayer continued its protest of the parts that the taxpayer contended were an integral part of the grain drying functions of the grain bin. Those items are the spreader 1HP 1PH super, 42' 345 cut-lok floor w/flash, 12" grandstand fl suprt, fan: drying 24" 7HP 1p230v, trans assy oval-new 2.66", face plate 24" fan, grill vents (unas) box of 5, fan: aeration 18" 1.5 HP 1p230v, trans fullflor less/face 12-18", trans. 18," and wire grill vent-assembled.

The 12" grandstand fl suprt actually support the floor. The supports do not, however, have a direct effect on the grain. The floor supports do not qualify for the exemption.

The taxpayer provided substantial documentation concerning the direct effect each of the remaining items has on the grain during the grain drying process. The remaining protested items qualify for exemption.

FINDING

The taxpayer's protest to the assessment of use tax on the floor supports is denied. The remainder of the

taxpayer's protests are sustained.

II. Tax Administration- Ten Percent Negligence Penalty

DISCUSSION

The taxpayer protested the imposition of the ten percent negligence penalty pursuant to IC § 6-8.1-10-2.1. Indiana Regulation [45 IAC 15-11-2](#)(b) clarifies the standard for the imposition of the negligence penalty as follows:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The standard for waiving the negligence penalty is given at [45 IAC 15-11-2](#)(c) as follows:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

The taxpayer provided substantial documentation to indicate that its failure to pay the assessed use tax was due to reasonable cause rather than negligence.

FINDING

The taxpayer's protest to the imposition of the negligence penalty is sustained.

Posted: 11/01/2006 by Legislative Services Agency

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